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IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA

Plaintiff,

vs.

RICKY JAMES JR. SALAS SANTOS,

Defendant.

CRIMINAL CASE NO. 20-00021

**UNITED STATES' NOTICE OF INTENT
TO MOVE TO ADMIT SELF-
AUTHENTICATING EVIDENCE
PURSUANT TO FEDERAL RULES OF
EVIDENCE § 902(14).**

Pursuant to Federal Rules of Evidence § 902(14), the United States provides this notice of intent to introduce and admit data extracted from electronic devices, storage medium or files at the trial scheduled for November 17, 2020.

Federal Rules of Evidence § 902 states as follows:

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(14) Certified Data Copied from an Electronic Device, Storage Medium, or File.

Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

1 The reference to the “certification requirements of Rule 902(11) or (12)” is a process by
2 which a proponent seeking to introduce electronic data into evidence must present a certification
3 in the form of a written affidavit that would be sufficient to establish authenticity were that
4 information provided by a witness at trial. This affidavit, provided by a “qualified person,” is
5 U.S. Coast Guard Special Agent Nicholas Wellein, who collected the evidence and can attest to
6 the requisite process of digital identification utilized.

7 In applying Fed. R. Evid. § 902(14), the accompanying Judicial Conference Advisory
8 Committee notes provide guidance and insight concerning the intent of the law and how it should
9 be applied. The second paragraph of committee note to Fed.R.Evid. § 902(14) states, in its
10 entirety, as follows:

11 Today, data copied from electronic devices, storage media, and electronic files are
12 ordinarily authenticated by “hash value.” A hash value is a number that is often
13 represented as a sequence of characters and is produced by an algorithm based upon the
14 digital contents of a drive, medium, or file. If the hash values for the original and copy
15 are different, then the copy is not identical to the original. If the hash values for the
16 original and copy are the same, it is highly improbable that the original and copy are not
17 identical. Thus, identical hash values for the original and copy reliably attest to the fact
18 that they are exact duplicates. This amendment allows self-authentication by a
19 certification of a qualified person that she checked the hash value of the proffered item
20 and that it was identical to the original. The rule is flexible enough to allow certifications
21 through processes other than comparison of hash value, including by other reliable means
22 of identification provided by future technology.

23 The Advisory Committee notes further state that Rule § 902(14) is designed to streamline
24 the admission of electronic evidence where its foundation is not at issue, while providing a notice
procedure where “the parties can determine in advance of trial whether a real challenge to
authenticity will be made, and can then plan accordingly.” This rule provides that properly
certified electronic data is now afforded a strong presumption of authenticity, an opponent may
still lodge an objection, but the opponent now has the burden to overcome that presumption.

The United States further makes the record and certification of U.S. Coast Guard

1 Nicholas Wellein available for inspection by the defense. The United States requests that,
2 pursuant to Fed.R.Evid. § 104, a hearing on the preliminary question regarding admissibility be
3 held at the pretrial conference.

4 RESPECTFULLY SUBMITTED this 15th day of October, 2020.

5 SHAWN N. ANDERSON
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